

# The Solicitors' Journal

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## CURRENT TOPICS

### Rent Restriction Reform

MR. JOHN WATSON, President of the Royal Institution of Chartered Surveyors, who is also well known as a magistrate of juvenile courts, replying, on 14th March, at the annual dinner of the Royal Institution to the toast by the Lord Chancellor, spoke with authority on a matter which we referred to recently in enumerating reforms which should be within the bounds of legislative practicability. His words deserve quotation: "I speak from no brief, but from practical experience of housing management in congested urban areas over a long period of years and for many different owners . . . Evidence of the volume of human misery which results from bad housing is to be found in nearly every surveyor's office—and incidentally, sir, if I may say so—in the proceedings of every one of your juvenile courts. I assert, without fear of contradiction in this room, that under existing conditions, with restricted pre-war rents and repairs costing between two and three times what they did in 1939, there are types of property where it is virtually impossible for the most conscientious private landlord to do his job properly and make two ends meet. The result is not only that a great number of houses are increasingly and inevitably falling into disrepair. There are even graver consequences. I will only mention one. Great private landlords in the country as well as in the towns, and great public corporations are finding themselves compelled, in the face of this anomaly, to divest themselves of this class of property . . . Too often it falls into the hands of the small greedy speculator. Indifferent to his tenants' welfare, unmoved by their complaints, undeterred by repeated notices from an overworked sanitary authority, his purpose is to hold the property merely for a matter of months; to sweat it for such small gain as it may show him; and then to re-sell, at a narrow profit and in smaller lots, to others of the same kidney . . . Is it too much to ask you, sir, of your great knowledge of the law affecting the land, of your long experience of public affairs, above all of your great humanity, to impress upon your colleagues the need for action? . . . My Lord Chancellor, I thank you."

### Hearings in Camera

PUBLICITY is a vital safeguard of justice, and where the law permits hearings *in camera*, the power should be exercised sparingly and never without good reason. Mr. EDWARD HUGHES, solicitor for licensees for Sunday performances, said to the Rhyl Bench on 14th March, with regard to certain conditions imposed on clients' licences, that they should be made known and that it was deplorable that secret sessions were held as a matter of public policy. The chairman of the magistrates said: "There is no idea of any secrecy, and I object to the word being used." The correct view, we submit, is that, if the Press is excluded, it should be only for good reason, and that good reason should be publicly stated. Another instance of a private hearing occurred on 25th March, when reporters were excluded from an inquest at Kirklington,

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Yorkshire. In this case the coroner announced to the Press that he was only taking formal evidence of identification. After the inquest reporters were asked to see the coroner, who then gave them his account of the proceedings. A reporter asked whether the coroner had any other reasons than the coroner's prerogative for not admitting the Press. The answer was that the coroner had a discretion as regards the Press and he felt that in cases of that kind relatives would speak much more freely if the Press were not present. This is an argument which might apply to most trials, and it may well be asked whether it is right that these wide powers should continue to be the coroner's prerogative.

### Corporal Punishment

EX-HOME SECRETARIES, judges and ex-judges have again debated corporal punishment in the Lords, and the public, it is to be hoped, have been duly enlightened. The only argument which probably "rang the bell" with most readers was that which is confirmed in daily experience at home and at school, that to spare the rod is to spoil the child. STREATFEILD, J.'s recent criticism of statistics was repeated in another form by LORD OAKSEY. LORD LLEWELLIN's view that birching and short sentences might be more humane and more likely to reform than long sentences deserves consideration. The LORD CHANCELLOR, while expressing a view, based on statistics, against corporal punishment, asked the House to wait until 1952 to see whether crimes of violence had gone up. It was again LORD GODDARD who made the most forceful speech of the debate. He was against reintroducing corporal punishment only to have it removed by another Parliament, but added: "I believe that if this wave goes on and cannot be stopped the demand to stop it by corporal punishment will be overwhelming." An ounce of practice is worth a ton of theory, and common sense will assuredly assert itself again, so as to recognise the curative effect, particularly from the psychological point of view, of putting in their place the young "heroes" who attack old ladies.

### Directors' Travelling Expenses: Part IV (Sections 38 to 46), Finance Act, 1948

In a statement published on 14th March, 1950, by the Inland Revenue Department, notes set out the current practice of the department, which is being applied generally by Inspectors of Taxes for 1949-50 in relation to the treatment of directors' travelling expenses for tax purposes. The expense of travelling from home to business is not allowable, but expense necessarily incurred in travelling on business is allowable. Where travelling expenses are met for a director by the company but, if an assessment were raised under Pt. IV of the Finance Act, 1948, an equivalent amount would be admissible as a deduction, the local Inspector of Taxes notifies the company in the ordinary course under s. 42 that the Act will not be applied. A director who performs the duties of his office at one particular place is not entitled to any deduction for the expense of travelling to that place, and is assessable on the amount of the expense if it is met for him by the company. If a director of a company is required to carry out duties for that company at more than one place, any expense necessarily incurred in travelling between those places in carrying out his duties is allowable as a deduction. A director (whether whole or part time) of two or more companies within a group of parent and subsidiary or associated companies, whether or not entitled to separate remuneration from each of the companies of which he is a director, may be regarded

as having one place at which he normally acts as a director of companies within the group, and as entitled to a deduction for expense necessarily incurred in travelling from that place to other places on the business of the group in the course of his duties as a director. The same principle applies to an individual who is an employee of one company and a director of another company within the same group of companies. By "associated company" is meant a company on whose board the group is represented because of the group's shareholding or other financial interest. A director who gives his services without remuneration to a company not managed with a view to dividends (e.g., a company owning a hall or sports ground, or running a club) is not regarded as assessable in respect of any travelling expenses paid to him. A directorship may be held as part of a professional practice, and not (for example) because of some direct or indirect financial interest in the company. In such cases, expenses incurred by the director in carrying out his duties are regarded as allowable as a deduction in assessing the profits of the practice under Sched. D, whether the practice is carried on alone or in partnership. The remuneration as director is assessable under Sched. E in the normal course. The local Inspector of Taxes will, however, be prepared to agree that reasonable expenses paid to the director by the company shall not be assessed on the director under Sched. E where no claim is made to a deduction under Sched. D.

### Barristers' Clerks

WHERE do the gossip writers in the daily Press collect their information about the law? Writing of barristers' clerks in the *Star* of 11th March, a journalist stated that the old idea that they are not paid a salary by their "chiefs" but are paid by the lay clients still holds. The public, however, deserve to be told that barristers guarantee salaries to their clerks, and that those who are still waiting for briefs, of whom there are always a fair number in the Temple, contribute no negligible part of the clerks' salaries. Another puzzling statement is that few barristers' clerks earn less than £1,000 a year and many earn more than £2,000. It is enough to say that this is grossly untrue. However, in view of the compliment to solicitors implied in the last sentences, we are inclined to forgiye other inaccuracies. It was: "Bad debts are almost unknown among them, for though a barrister may not sue for his fees, a solicitor can, and the clerks have found a loophole here. They get their chiefs' fees (and their own) from the solicitor, and leave him to deal with the client."

### Recent Decision

In *Jacobs v. London County Council*, on 21st March (*The Times*, 22nd March), the House of Lords (LORD SIMONDS, LORD NORMAND, LORD MORTON OF HENRYTON, LORD MACDERMOTT and LORD RADCLIFFE) held that a person who stumbled over a protruding stopcock on a privately occupied forecourt of a shop which was adjacent and open to the highway was a licensee and, following *Fairman v. Perpetual Investment Building Society* [1923] A.C. 74, the occupiers could not be held liable for the damage which she had suffered. It was further held that the protruding stopcock was not a public nuisance, because it was not on the highway. Lord Simonds, in his speech, said that there was no justification for regarding as *obiter dictum* a reason given by a judge for his decision merely because he had given another reason also, because, if that were so, a case which *ex facie* decided two things would decide nothing.

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## THE RELUCTANT LANDLORD AND THE RENT ACTS: ANOTHER SOLUTION

At p. 122, *ante*, there appeared a suggestion to assist the property owner who has rooms in his house available for letting to ease the present housing shortage. As was there stated, the owner may be reluctant to let the rooms in view of his probable difficulty in recovering possession at a later date should he wish to have the accommodation for, say, a member of his family.

The suggestion proposed, which has already been commented on in the "Landlord and Tenant Notebook," at p. 174, *ante*, is to enter into a written agreement with the tenant for a definite term, the agreement to contain provision for notice to quit to be served by either party before the expiration of the term, and for the tenant to serve notice prior to entering. The argument is that the owner could then rely on para. (c) of Sched. 1 to the 1933 Act, but this is not, it is submitted, a satisfactory one. It will be remembered that under that paragraph the landlord can recover possession of a dwelling-house to which the Acts apply if the tenant has given notice to quit, and, in consequence of that notice, the landlord has contracted to let the house or has taken any other steps as a result of which he would, in the opinion of the court, be seriously prejudiced if he could not obtain possession.

In the "Landlord and Tenant Notebook," *ante*, several good grounds were expressed on which it is very probable that in the circumstances mentioned the landlord would, in fact, not be able to obtain possession in reliance on this paragraph. It is not proposed in this article to enlarge upon these reasons for the landlord's not being able to obtain possession, except to emphasise that, to enable him to do so, the letting envisaged by the landlord or the other steps taken by him after expiration of the notice to quit must be *consequent upon* the notice to quit. In the suggestion proposed, these matters would be antecedent to the notice to quit, and therefore, it is submitted, the court could not make an order

for possession. The court would be entitled to look at the whole transaction, and, apart from the contention that the court could not make the order, it is very probable that it would regard the tenancy agreement with suspicion.

A solution to this problem, which must in these days be of common occurrence, is to register the accommodation with the local housing authority under Defence Regulation 68 CB. Under this regulation, a local housing authority may establish a register for the purposes of the regulation. Any person who has in a dwelling occupied by him any living accommodation which he is willing to make available for occupation by tenants, whether with or without furniture, may apply to the authority in whose area the dwelling is situate for registration of the accommodation and of the terms on which it is to be made available. In the circumstances now under discussion, the accommodation would not be made available for letting without being registered, so that the authority could properly register the accommodation. In the event of the authority approving and registering the accommodation, then so long as the letting accords with the registered terms and conditions, the accommodation is not, as respects that letting, treated as a dwelling-house to which the Rent Acts apply. Further, by virtue of s. 12 (4) of the Furnished Houses (Rent Control) Act, 1946, that Act will not apply to the accommodation registered and so let.

It seems, therefore, that it would be perfectly safe to register the accommodation available for letting under Defence Regulation 68 CB, and there would be no difficulty in obtaining possession of the accommodation as and when required by the owner. It is thought that many local housing authorities would welcome registration under the regulation and subsequent letting, for the present acute housing shortage would thereby be eased.

S. M.

### Costs

## SECURITY—III

WE cannot leave this subject of security for costs without considering the position that arises in connection with divorce matters. To an extent the ordinary rules of the Supreme Court will apply, but there are special features in connection with divorce which call for their own particular treatment.

The most common type of application for security which one encounters in divorce practice is an application under r. 74 of the Matrimonial Causes Rules, 1947, and it may be interesting and instructive to trace the history of the rule. Indeed, some knowledge of the rule is essential for a proper understanding of the principles involved.

Formerly, the laws of this country gave to the husband the whole of his wife's personal property as well as all the income from her freehold estate, with the result that, unless there was a settlement (which was unlikely, for settlements were not known until fairly late in the history of English law), the wife was entirely without means except such as she derived from her husband.

Originally, divorce matters were dealt with in the old ecclesiastical courts, and the rules of those courts provided for written evidence only, so that, before the hearing of a cause, the whole of the expenses had already been incurred. It was possible, therefore, for the attorney who was acting for the

wife in a matrimonial matter to lodge with the court, before the hearing, a bill of costs in connection with the whole of the cause, including the hearing, and a practice arose whereby such a procedure was adopted and the costs were taxed and the husband was ordered to pay into court the whole amount of the costs of the cause, before the hearing took place.

When matrimonial matters were transferred to the Probate Court new rules of evidence were introduced and oral evidence was permitted, with the result that it was impossible for the attorney to tax his costs before the hearing, for the very good reason that he did not know how many witnesses were to be heard and, therefore, how long the hearing would last. This led to a practice whereby an application was permitted to be made for the provision of security for costs, the amount of the security being the sum which it was anticipated would be incurred by the wife in prosecuting her petition or in answering the petition of her husband, and the amount of the security so ordered was paid into court.

Then, still following the old practice of the ecclesiastical courts whereby the wife's costs were paid before the hearing, a procedure arose of limiting the amount of the wife's costs, ascertained after the hearing in the Divorce Court, to the amount of security which had been obtained. This was

manifestly erroneous and inequitable and arose from a false analogy between the procedure under the rules of the ecclesiastical courts and the procedure in the newly constituted Divorce Court. But it continued for a considerable time until, in the case of *Robertson v. Robertson* (1881), 6 P.D. 119, the error in reasoning was laid bare, with the result that the costs of the wife were thereafter no longer limited by the amount which had actually been paid into court under the order for security.

It may be noted in passing that it had always been the rule that security was ordered in those cases only where the wife was entirely destitute of financial resources, and no order for security was necessarily made, nor was the successful husband ordered to pay his wife's costs in those cases where it could be shown that the wife had separate property of her own.

These old rules of the ecclesiastical courts were preserved by the Matrimonial Causes Act, 1857, and are now continued by s. 103 of the Supreme Court of Judicature (Consolidation) Act, 1925, so that the principle whereby the wife is entitled to security for her costs, in those cases where she has no separate property of her own, remains. The machinery for giving effect to these rules is, as we noticed at the outset, to be found in r. 74 of the Matrimonial Causes Rules, 1947.

Under r. 30 of these rules the petitioner or any party defending a matrimonial cause shall, before setting the cause down for hearing, submit to the registrar the pleadings and proceedings in the cause and obtain a certificate from him that such proceedings are in order. Then, by r. 74, having obtained such a certificate as is required by r. 30, the wife may apply to the court for security for her costs "of the cause up to the hearing and of and incidental to such hearing."

The registrar will hear the application and will determine what sum will be sufficient to cover the wife's costs and in what manner such amount shall be secured. He may order that the sum be paid into court, or, alternatively, he may direct that the amount shall be otherwise secured, as, for example, by bond. The usual order is for security to be furnished within seven days with a stay of proceedings meantime.

Once again, following the old practice which had arisen in the ecclesiastical courts, security will not be ordered as a matter of course, and if it can be shown or is admitted that the wife enjoys a separate income in her own right, then an order for security may be refused. The whole of the facts will have to be laid before the registrar when making the application, including affidavits as to means where there is any dispute as to the property or income of the respective parties. In making the application, counsel's advice on evidence should be produced and the number of witnesses who are to be called should be disclosed, together with details of their station in life and the distance that they will have to travel to give evidence and the probable length of their stay at the place of trial. Particulars of the number and length of the documents involved in the case and any other relevant facts necessary to guide the registrar should also be available.

The principle involved in divorce cases is, as Lord Merrivale observed in the case of *S v. S and P* (1927), 44 T.L.R. 52, that "there is something in the nature of a prescriptive right, upon cause shown, to secure to the wife the means of defence." If she has the means then security will not be ordered as a matter of course. If it is apparent that she has not the

means then common justice and the nobler view, as it was called by Jessel, M.R., in the case of *Robertson v. Robertson*, *supra*, which holds that any man of right feeling would desire that his wife should have the means of defending herself against the charges made against her, will demand that the wife should be provided with those means, and r. 74, *supra*, is the machinery by which the husband is compelled to supply them.

Any issue in the proceedings is a cause or matter within s. 225 of the Supreme Court of Judicature (Consolidation) Act, 1925, with the result that the husband may be ordered to provide security for his wife's costs of the trial of the issue, as, for example, an issue as to domicile (see *Johnstone v. Johnstone* [1929] P. 165). That case was decided on the wording of r. 91 of the Matrimonial Causes Rules, 1924, which has been reproduced in substance in r. 74 of the Matrimonial Causes Rules, 1947, so that the reasoning upon which the judgment in that case is founded still applies.

The principle cannot be extended, however, to matters which arise long after the hearing of the original petition, for they cannot then be regarded as "of and incidental" to those proceedings. Thus, the trial of an issue which arose eight years after the decree absolute is not a proceeding "of and incidental to" the original trial (see *Gower v. Gower* [1950] 1 All E.R. 27). However, Barnard, J., in that case found himself able to order the former husband to provide security, on the general ground that the court had inherent jurisdiction to order security in proper cases, and he traced this inherent jurisdiction to the old rules to which we have referred above.

It is not without importance to note that this principle that the wife is entitled to look to her husband for the means of defending herself against the charges made against her, where she has no separate income or estate of her own, depends entirely, of course, on the proposition that she has a defence. If, in defending the proceedings, she is merely adopting a tactical attitude, or she is doing so without good grounds, as an alternative to allowing the husband to obtain a decree without opposition, then logic and the same common justice to which we have referred before will operate so as to prevent her from embarrassing her husband by forcing him to provide security. This principle is given practical effect by Direction 4 of the Divorce Registry, which requires a wife whose defence is a simple denial of the charges made against her to furnish an affidavit by herself or her solicitor showing that she has good grounds of defence on the merits of the case.

The order for security which the wife obtains is not final and conclusive, and if circumstances arise which will increase her costs beyond the amount in which security is ordered, then she may make a further application.

So much for the wife's costs. Two other points arise. The husband may himself obtain an order for security against his wife where she is the petitioner and is out of the jurisdiction and is in possession of a separate estate (see *M (falsely called De B) v. De B* (1875), 33 L.T. 263). Further, a co-respondent may obtain an order for security against a petitioner where the latter is claiming damages and is out of the jurisdiction of the English courts, but only if the petitioner has no assets in this country which are attachable (see *Redfern v. Redfern and Herbert* (1890), 63 L.T. 780). This seems to follow the ordinary principles to which we have referred in an earlier article.

J. L. R. R.

The Lord Chancellor has appointed Mr. Justice WILLMER, O.B.E., to be a member of the General Claims Tribunal in the place of the late Mr. Justice Lewis, O.B.E.

Mr. S. McLEOD RICHARDSON, legal assistant to the Town Clerk of Dewsbury, has been appointed an assistant solicitor to the North-Eastern Coal Board at Doncaster.

A Conveyancer's Diary

## ASSENTS UPON TRUST

THE purpose of this article is to examine the decision in *Re Hodge* [1940] Ch. 260, with the object of showing, or at least attempting to show, that this decision is a most inadequate support for the proposition for which it is usually cited. This proposition concerns the applicability of s. 36 (4) of the Administration of Estates Act, 1925, which provides that an assent to the vesting of a legal estate shall be in writing, signed by the personal representative, and shall name the person in whose favour it is given and shall operate to vest in that person the legal estate to which it relates; and further, that an assent not in writing, and not in favour of a named person, shall not be effectual to pass a legal estate.

It is well known that s. 36 effected a revolution in the law relating to the devolution of property upon a death. The results of this enactment in two directions were of particular importance. Before 1926 a devisee derived title under the will. The legal and the beneficial interest in the devised property vested in him upon the death of the testator, subject only to the powers of the personal representative to deal with that property in course of administration, and there was therefore no necessity for the personal representative to give an assent vesting the legal estate in the property in the devisee, since that estate was already in the devisee; an assent was, however, useful as marking the decision of the personal representative that the property comprised in the assent was no longer required to meet any of the testator's liabilities and could, therefore, be thenceforward regarded as free from the personal representative's power of sale. Now, however, the legal estate in realty vests in the personal representative on the death, and an assent is required to divest that estate and vest it in the person entitled thereto beneficially. Section 36 (4) prescribes the mode for effecting this. The other important feature of the new law regarding assents is that the executor and the administrator are now in exactly the same position. Before 1926 an executor could make an assent, and such an assent was often implied (see, e.g., *Wise v. Whitburn* [1924] 1 Ch. 460), but an administrator, whatever the nature of the grant made in his favour, could only transfer realty by means of a conveyance.

Now it sometimes happens that the persons in whose favour an assent should be made under s. 36 (4), assuming for the moment that an assent is necessary in such a case at all, are the persons in whom the legal estate is already vested, e.g., the personal representatives of the deceased. The will may appoint A and B to be both executors and trustees, or A and B may take out a grant of administration to an estate which includes realty, in which infants are beneficially interested. If the latter is taken as the typical example for the purposes of this article, on conclusion of administration A and B hold any realty comprised in the estate upon trust for sale, and upon the further trusts affecting the proceeds of sale necessary to give effect to the beneficial interests of the infants as provided by the Administration of Estates Act, 1925. The administrators have, then, ceased to be personal representatives, and hold the property as trustees upon the prescribed trusts. If it is then desired to sell the property, the proper course is for the administrators to assent to the vesting of the property in themselves as trustees under s. 36 (4) (see *Re Yerburgh* [1928] W.N. 208). If that is done, no question concerning the title of A and B to sell the property can possibly arise.

There is, however, a school of thought which says that, in a case such as this, the legal estate being already vested in

A and B, there is no necessity for vesting it in them again by means of an assent, and indeed that the language of s. 36 (4) is inapposite to impose such a requirement in the sort of circumstances under consideration. There is, perhaps, something to be said for this view if the problem is considered in the terms of s. 36 (4) alone, but its adherents go further than this and rely on *Re Hodge, supra*, as authority for the opinion they hold.

This was a case where a testatrix, who died in 1933, devised certain freehold property to her husband (the only proving executor of her will) in consideration of his paying the testatrix's sister £2 a week during her life. The surplus rents and profits of this property were not enough for this purpose, but the husband made up the sum of £2 a week out of his own pocket and paid it to his wife's sister for some years, until he sold the property in question. He then took out a summons asking whether, in the event of the acceptance of the devise by him, the will imposed on him a personal liability to pay the amount in question. On this question Farwell, J., came to the conclusion that the gift was a gift upon a condition and that, if the gift were accepted, the obligation fixed upon the devisee and created a personal obligation which he then had to perform. The further question then necessarily arose, whether the husband had accepted the gift or whether it was still open to him to disclaim it. Six years had elapsed between the death and the sale of the property, but he had never assented in writing to the vesting of the property in himself (on the sale of the property he had presumably made title as personal representative), and it was argued on his behalf that the property could never have vested in him as devisee because there had been no written assent, and such an assent was necessary under s. 36 (4). This argument was rejected. "No doubt," said Farwell, J., "under the Act, if a vendor is selling as beneficial owner taking under a will, the purchaser is entitled to require a written assent in order that he may be satisfied as to the title, and the Act gives him a right to demand it, but in a case of this sort the position is not the same. The legal estate in the property is vested in the plaintiff as legal personal representative and there is therefore no difficulty with regard to that. His equitable interest as devisee depends upon equities and upon whether or not he has done acts which must be treated as amounting to sufficient evidence of assent so as to make it impossible for him now to say that he has never accepted the gift."

This last sentence makes it clear that for the purpose of the decision, which was that the husband had accepted the devise and, in consequence, undertaken the burden laid upon him to make the weekly payments, the only assent which was relevant was an assent by conduct concerning not the legal estate (with which alone s. 36 (4) is concerned), but the equitable interest of the husband as devisee. This does not in any way affect the generality of the statement which precedes it, to the effect that in the normal case of a vendor selling a beneficial interest derived under a will the purchaser is entitled, under the provisions of the Act, to insist upon a written assent "so that he may be satisfied as to the title." The union of the legal and beneficial interests in the husband in this case, the one coming to him in his capacity as personal representative and the other by reason of his dealing with the property as if it had been his own in the interval before its sale, may be regarded as fortuitous, and certainly there is no compulsion to draw from this accidental circumstance the

conclusion that a conveyancing requirement imposed by statute was, as a result of this circumstance, dispensed with. *Re Hodge* was not a vendor and purchaser case, and the title to the legal estate in the property was not in question; it had, in fact, as has already been seen, been sold to a third party.

As against this strictly limited decision there is the case of *Re Yerburch*, *supra*, in which administrators asked whether they had power, on the conclusion of administration, to appoint themselves trustees of the property comprised in the

estate. The case is shortly reported, but it was held that on the conclusion of administration, infants being interested in the estate, the administrators became trustees automatically, and that when that happened they should make a vesting assent [*sic*] under s. 36, vesting the property in themselves as trustees. The word "vesting" apart, this direction is clear, and if ever the necessity for an assent in the sort of case mentioned above is questioned and the decision in *Re Hodge*, *supra*, relied upon in support of the objection, this other decision should be recalled in favour of the contrary view.

"ABC"

### Landlord and Tenant Notebook

## AGRICULTURAL HOLDINGS ACT, 1948: A JURISDICTION POINT

THE scope of provisions for compulsory arbitration in Agricultural Holdings Acts has often been the subject of litigation. Courts do not like being ousted, and, generally speaking, if Parliament wishes to deprive any aggrieved person of his normal remedy, it must say so in plain language.

The new Act, that of 1948, has now produced a decision—*Goldsack v. Shore* (1950), 94 Sol. J. 192 (C.A.)—on what is a new provision, that contained in s. 2. The object of this section was to dispose of, or at all events modify, the law illustrated by *Land Settlement Association, Ltd. v. Carr* [1944] K.B. 657 (C.A.). The plaintiffs in that case "got round" the then security-for-tenure provisions, those of the Agricultural Holdings Act, 1923, by granting tenancies running from 364 days to 364 days. The 1948 Act, like that of 1923, applies only to tenancies for at least two years; but it makes it more difficult for such to come into being. By s. 2 (1), "Subject to the provisions of this section, where under an agreement made on or after 1st March, 1948, any land is let to a person for use as agricultural land for an interest less than a tenancy from year to year, or a person is granted a licence to occupy land for use as agricultural land, and the circumstances are such that if his interest were a tenancy from year to year he would in respect of that land be the tenant of an agricultural holding, then, unless the letting or grant was approved by the Minister before the agreement was entered into, the agreement shall take effect, with the necessary modifications, as if it were an agreement for the letting of the land for a tenancy from year to year . . ."

It will be observed that "agreement" is first mentioned in a clause the primary purpose of which is to limit the effect of the subsection to events occurring after it first became law; the section was originally s. 40 of the Agriculture Act, 1947, which came into force on 1st March, 1948. But it is the agreement that is to take effect as if it were an agreement for a different term; indeed, it may be of a different kind, for both tenancies (if less than yearly) and licences (of any duration) are to take effect as tenancies.

The county court judge who tried *Goldsack v. Shore* at first instance was called upon to interpret the word "agreement" when jurisdiction was challenged by virtue of the provision in subs. (2), which runs: "Any dispute arising as to the operation of the last foregoing subsection in relation to any agreement shall be determined by arbitration under this Act." The action was simply one for possession. The plaintiff alleged that he had granted the defendant either a licence to occupy or a tenancy at will, no payments or rent being provided for, of the land claimed, the purpose being that of grazing sheep. The defendant took the point that the dispute was one which must be determined by arbitration.

The county court judge's view was that "agreement" meant common consent to a transaction and no more, and he held that as there had been such common consent in the matter of a licence, he had no jurisdiction. The Court of Appeal held that this view was erroneous. Agreement meant a contract supported by valuable consideration moving from the grantee to the grantor. The case was therefore remitted to the county court for ascertainment of facts necessary to enable it to determine whether or not there was an "agreement" in that sense of the word.

It will have been noticed that the county court judge did, on whatever evidence was adduced at the hearing, decide between licence to occupy and tenancy at will in favour of the former. If he had, on such evidence, come to the conclusion that the plaintiff had granted the defendant a tenancy at will, there might have been some argument on the question whether implied covenants would not provide the necessary consideration. At all events, before any landowner thinks of granting a rent-free tenancy at will he would do well to consider applying to the county agricultural executive committee for approval, under s. 2 (1) of the Agricultural Holdings Act, 1948.

The mistake made by the county court judge can be compared, or contrasted, with that made by an arbitrator in the case of *May v. Mills* (1914), 30 T.L.R. 287. The parties there were tenant and landlord of a public-house, and the tenancy agreement said that if any question or difference should arise during the term touching the agreement or premises, it should be referred to arbitration. The history of the events leading up to the litigation is not of vital interest, but when the tenant sought to enforce an award of £250-odd for damages for fraud by which the defendant had induced him to enter into the tenancy agreement, the defendant successfully pleaded that the arbitrator had had no jurisdiction. The only differences referable were such as arose during the term. The arbitrator had "found as a fact" that the difference before him did arise during the term; but the question whether the difference so arose was not one referred to the arbitrator, and he could not, Coleridge, J., held, clothe himself with jurisdiction by finding this preliminary fact in favour of the plaintiff so as to bind the defendant.

In *Goldsack v. Shore* the court of first instance declined jurisdiction by failing to decide a preliminary question which it was bound to decide, namely, the question whether the transaction alleged to have taken place was within s. 2 (1) of the Act at all.

What further investigation may have produced I do not know, but, revolutionary as may be the change effected by the new Act, one would be a little astonished to learn that a

licence to occupy land rent-free for an indefinite period was to take effect as a yearly tenancy "with the necessary modifications." It is right to point out that the Act uses the word "contract" as well as the word "agreement," and it may well be that the county court judge was influenced by this fact and considered that it showed that different meanings were to be attributed to the two. Indeed, it may be said that the security of tenure is conferred in a somewhat roundabout and subtle manner. The statute commences by giving, in s. 1 (1), what one might think was a complete definition of the expression "agricultural holding": the aggregate of the agricultural land comprised in a contract of tenancy, not being a contract under which the said land is let to the tenant during his continuance in any office, appointment or employment held under the landlord. It is only when one reaches s. 94 (1) that one finds that contract of tenancy does not include just any such contract; it means a letting of land, or agreement for letting land, for a term of years or from year to year, etc. One may then turn back to s. 2 to find that *prima facie* all contracts for the letting of land

or licensing of persons to use land as agricultural land are to be within the Act; only here the word used is "agreement" and this may well have caused the county court judge to think that mere consent to a transaction would deprive him of jurisdiction.

Probably the draftsmen considered "contract" too formal a word to use in connection with licences, which were, one may assume, included in order to avoid attempts to deprive people of the benefits to be conferred by disguising tenancies as licences; there is a proviso to the subsection designed to protect those who grant tenancies or licences in contemplation of the use of the land for grazing and mowing during some specified period of the year. And the condition resolute of Ministerial approval may be explained by the fact that while in *Land Settlement Association, Ltd. v. Carr, supra*, the plaintiffs kept themselves outside the Agricultural Holdings Act, 1923, their motives were of the purest; they were out to convert unemployed townsmen into active farmers, and presumably wished to guard against the possibility of failure of any particular experiment.

R. B.

## PRACTICAL CONVEYANCING—XI

### SEARCHES AGAINST VENDOR'S PREDECESSORS IN TITLE

IN a note on this subject, *ante*, p. 159, attention was drawn to the difficulties which are likely to arise in 1955 and afterwards, because it will then be possible to have a root of title, under an open contract, after 1925. As a result a purchaser who may acquire the land after 1955 may have actual notice, under the Law of Property Act, 1925, s. 198, of a matter registered in the land charges register after 1925 but before the root of title, even though he could not search because he did not know the name of the estate owner at the time of registration. Several learned correspondents have written to point out that the difficulty will arise particularly in the case of restrictive covenants and the writer agrees completely with their conclusions. One reader, for instance, remarks: "I agree with the learned writer of the article that many of the interests both legal and equitable which he mentions may well by that time be statute-barred, but there is one particular interest capable of registration which most likely need not be statute-barred and that is the benefit of a restrictive covenant. Prior to the 1925 legislation the purchaser of a legal estate without notice would have been protected against such an undisclosed equitable interest, provided he had carried out a proper investigation of title, but after 1955 he will not be so protected if the restrictive covenant is registered, and it may well have been registered against the name of the former estate owner of whose name the purchaser is not aware, as the registration may have taken place over thirty years from the date of his purchase. Notwithstanding this the purchaser will be deemed to have notice of the equitable interest and lapse of time will be of no assistance to him, for the covenantee's right of action will not accrue until there has been a breach of the covenant."

The only possible solution to the problem seems to be an amendment to the Law of Property Act, 1925, s. 198, so as to limit the cases in which the purchaser is considered to have actual notice to those in which registration took place within thirty years. Where registration took place more than thirty years ago the equitable rules regarding notice would have to be restored. This suggestion undoubtedly gives rise to difficulties. For instance, it means that in the normal case in which the root of title is a document appreciably more than thirty years old, one rule (i.e., that registration is the test of enforceability of a covenant) would apply for thirty years back from the date of the contract, and another rule (i.e., that notice to the purchaser is the test of enforceability) would apply to covenants entered into more than thirty years before. Secondly, it would mean that registration of a

restrictive covenant would ensure that a purchaser of the land restricted would not be able to escape from observance of the covenant on the ground that he had no notice of it, but the effect of the registration might cease after thirty years. On the whole, this does not seem a serious objection. Restrictive covenants enforceable on equitable grounds against a purchaser with actual or constructive notice served their purpose well in the years before 1926 and the same rules could conveniently operate again. What is more, one must have regard to the fact that town planning restrictions are tending to take the place of restrictive covenants, and so such covenants are not likely to be of great importance much beyond thirty years after registration.

Another solicitor has pointed out that a purchaser after 1955 will be entitled to a copy of any covenants incorporated by reference in one or more of the abstracted deeds, even if they were imposed by a document before the root of title, and that it is probable that the habendum of each of the abstracted conveyances will be expressed to be subject to them so far as they remain subsisting and capable of being enforced. He concludes that as the purchaser after 1955 will be entitled to a copy of the covenants "he ought to be able to ascertain at least the name and probably the address of the original purchaser so as to be able to search the register to find out if the restrictive covenants were registered and so binding on him." This will certainly be the case for a few years after 1955, but in course of time it is possible that the contents of the covenants may be known but not the parties to the deed imposing them. It is also worth noting that this argument supports the view that enforceability on equitable grounds would be convenient.

Whether an amendment of the Law of Property Act, 1925, s. 198, on the lines indicated above would be advisable is a matter of opinion; there are advantages and disadvantages both ways.

### SUPPRESSION OF FACTS AS FRAUD

"Fragmentary statements may be in terms true so far as they go, but if they suggest that which is false and are intended to do so, that will constitute an actionable fraud" (Clerk and Lindsell on Torts, 10th ed., p. 670). An example in a conveyancing matter arose in *Bushell & Co. v. White, Estates Gazette*, 18th March, 1950, p. 224. The plaintiffs had contracted to buy leasehold premises from the defendant and claimed rescission of the contract and damages for fraud; the defendant admitted that the contract could be rescinded but denied fraud. Before the contract, the local authority

had requisitioned the property but suspended the operation of the requisition pending conversion of the premises by the owner into residential flatlets. The authority refused to sanction the use of these premises for storage which was the purpose for which the plaintiffs required them and, in fact, so used them after signing the contract. The defendant's father, as her agent in a letter accepting the offer to purchase, stated that he personally had no objection to the premises being used as a store place. He admitted that he knew of the requisitioning order when the letter was written. Wynn Parry, J., stated that the writer of the letter was representing that he had no knowledge of anything making it impossible to use the premises as a store and that

they were suitable for that purpose. According to the report the learned judge said: "This involved a deliberate suppression of a most material fact, namely, the existence of the requisitioning order... There was only one conclusion, namely, that [the writer of the letter], by his suppression, made a fraudulent representation with a view to inducing the contract. The plaintiffs were entitled to damages for fraudulent misrepresentation." This case involves no new point of law and will probably not be reported elsewhere, but there is an important lesson to be learnt from it. It is dangerous to try to rely on a narrow construction of words used on such an occasion if their general effect is to mislead.

J. G. S.

## HERE AND THERE

### ASSIZE INCIDENTS

It happened that last week two different newspapers in retrospective extracts from their columns a hundred years ago illustrated the uncertainties attending the responsibilities of an official at the assizes. The *Evening Standard* on 21st March, 1850, had news of an incident on the Home Circuit at Lewes: "Chief Justice Wilde inflicted a fine of £50 at the Sussex assizes on Mr. Hudson, the officer of the sheriff in Brighton, for allowing one of the jury, of whom he had charge while they left the box for a few moments to obtain refreshment, to separate from his fellows and 'to run up and down in his bailiwick.'" A subsequent appeal to be let off was turned down, "the Chief Justice insisting on the necessity of discipline." Now over to Aylesbury (on the Norfolk Circuit then) with Chief Baron Pollock in charge of the Crown business and Mr. Justice Wightman hearing the civil cases. This time it is *The Times* and the date is again 21st March, 1850: "On Thursday last Mr. Selby Lowndes, who sat as High Sheriff at the Aylesbury assizes, had it seems told his huntsman to bring his hounds to the White Hart Inn at Aylesbury in order to treat his hunting friends to a bye-day at Aston Abbotts immediately after the assizes. The White Hart Inn yard in which the hounds were placed is close to the court where the sheriff was sitting, and owing to some disturbance in the court, the sheriff was repeatedly obliged to call 'Silence!' which he did with his strong and powerful voice in good earnest. The call was heard by his faithful hound, Silence, who at length broke through the paling and rushed into the court, where his master, the sheriff, was sitting, with the whole pack at his heels. The assize trumpeter was requested to blow but his metre was not attended to—the hounds would not quit the court for him nor did they till their master, the sheriff, called them together, and to the amusement and satisfaction of the court, took them, in the style of a thorough good huntsman, to a place of safety. All business was suspended till the worthy sheriff returned to the court." The scene of the hounds pouring into court, the sheriff shouting and the trumpeter blowing, with all the incidental detail from Bench to public gallery, calls aloud for Hogarth's brush. It all reminds us how the background of English life has changed and how quickly.

### STRANDING

In 1941 the steamship "Towerfield" stranded on an undredged spit at the entrance to Workington Harbour and broke her back. Subsequently, I am told, she was put together again and eventually sunk by enemy action, but ever since then she has been sailing, ghost-like, the seas of litigation, the owners claiming against the harbour board and the board against the owners. Only now is she nearing her last landfall with judgment reserved in the House of Lords. One of the matters discussed was the possibility of the master of a ship remonstrating with the pilot if he seemed to be running into some danger. There is authority on the point and it is rather disappointing that none of the counsel engaged saw fit to cite the *dictum* of, I think, Phillimore, J., on that very point. Cross-examination of a master had gone like this: "Q. Now, captain, you were on the bridge for ten minutes or so before the ship struck this rock?—A. Yes, I was. Q. And the ship was heading straight for it?—A. Yes. Q. Then why did you not give an order to alter the ship's course or to stop her?—A. It was not my business to give such an order. The ship was in the possession of the official pilot who was responsible for the navigation. Q. But surely you might have said something to the pilot?—A. What could I have said to a man who was supposed to have expert knowledge of the place?" Here the learned judge intervened. "You might have said to him, 'You goose, you great goose, do you not perceive that you are running upon a rock?'" Phillimore, J., had no great knowledge of the ways of those who go down to the sea in ships. He knew a lot more about South Kensington, most of which he owned—see some of the street names to this day. No doubt he knew more of the Round Pond than of the Seven Seas.

### TAIL PIECE

A STORY is going about that a Chancery judge was called on to sit in the Divorce Division and took some cases in the undefended list. The usual hotel bill was produced. He looked at it, took a stamp objection and dismissed the petition. I do not vouch personally for this report.

RICHARD ROE.

## OBITUARY

### MR. J. J. B. YOUNG

Mr. John Joseph Baldwin Young, solicitor, of Sheffield, at one time Deputy Coroner for Sheffield, died on 10th February, aged 81. He was admitted in 1897.

### MR. W. S. M. KNIGHT

Mr. William Stanley MacBean Knight died on 21st March, aged 80. He was admitted in 1893, but decided to become a barrister and was called by the Inner Temple in 1899. He was vice-chairman of the Local Government Committee from 1907 to 1910, and from 1908 to 1910 a member of the Central Unemployed Body for London. His publications included *The Business*

*Encyclopædia and The History of the Great European War (1914-20)* in ten volumes.

### MR. A. MITCHELL

Mr. Albert Mitchell, solicitor, of Hastings, died on 21st March. He was admitted in 1899 and was a member of the Church Assembly from 1920 until this year. His books include *The Faith of an English Churchman* and *A Study in History and Doctrine*.

### MR. F. LEIGH

Mr. Frank Leigh, retired solicitor, of Manchester, died recently, aged 82. He was admitted in 1893.

## NOTES OF CASES

### HOUSE OF LORDS

#### **BANKRUPTCY: FOREIGNER'S DEPARTURE FOR EIRE LEAVING EXCESS PROFITS TAX UNPAID**

##### **Theophile v. Solicitor-General**

Lord Porter, Lord Normand, Lord Morton of Henryton,  
Lord Reid and Lord Radcliffe. 9th February, 1950

Appeal from the Court of Appeal (1948), 64 T.L.R. 446.

The appellant, a Rumanian, went to live in Eire when owing the Crown £30,000 excess profits tax in respect of his business in England as a leather merchant. He executed a power of attorney whereby his wife was enabled in disposing of all his assets in England to dispose of his business to a limited company which took on his trade debts, though no provision was made for payment of the £30,000. The Crown, alleging that the debtor had committed an act of bankruptcy within the meaning of s. 1 (1) (d) of the Bankruptcy Act, 1914, at a time when he was a person carrying on business in England within the meaning of s. 1 (2) (c), obtained an order giving leave to serve on him a petition in bankruptcy out of the jurisdiction. It was contended for him that, as he was not a British subject, and as at the time of the alleged act of bankruptcy he was neither in England nor carrying on business there, the bankruptcy jurisdiction did not extend to him. The Court of Appeal, reversing Mr. Registrar Parton, gave leave to serve the petition. The debtor now appealed. The House took time for consideration. By s. 1 (1) (d) of the Bankruptcy Act, 1914, a debtor commits an act of bankruptcy if, with intent to defeat or delay his creditors, he departs out of England. By subs. (2) "a debtor" includes any person, whether a British subject or not, who at the time when any act of bankruptcy was done or suffered by him . . . (c) was carrying on business in England."

LORD PORTER, in a speech with which the other noble lords agreed, referred to *Cooke v. The Charles A. Vogeler Company* [1901] A.C. 102, at pp. 107, 108; *In re Crispin* (1873), L.R. 8 Ch. 374; *Ex parte Blain* (1879), 12 Ch. D. 522; *Ex parte Pearson* [1892] 2 Q.B. 263, at p. 268; and *In re the Debtors* (No. 836 of 1935) [1936] Ch. 622, and said that, like Lord Greene, M.R., he thought the contention that the appellant debtor was not a "debtor" within the meaning of s. 1 disposed of if s. 1 (1) (d) were read as if it ran: "Any person whether a British subject or not who at the time when any act of bankruptcy was done by him was carrying on business in England commits an act of bankruptcy if, with intent to defeat or delay his creditors, being out of England he remains out of England." On that reading, it was impossible to add as a limitation the provision that no foreigner was caught by the Act unless he in some way owed allegiance to the law of England or the act had been committed in this country: to adopt that construction was not to limit the meaning of the wording of the section, but to contradict it. The argument still remained open to the debtor that he was not carrying on business in England within three months of the presentation of the petition and, therefore, was not a debtor within the meaning of the Act. True, he was not actively carrying on business within those three months, but there was a series of cases beginning with *In re Dagnall* [1896] 2 Q.B. 407, and ending with *In re Reynolds* [1915] 2 K.B. 186, which, in unbroken sequence, decided that trading did not cease when the shutters were put up, but continued until the sums due were collected and all debts paid. True, all the decisions had been given in respect of married women's trading, and a distinction had been made between the earlier Acts, where the expression was "as a trader," and the later, where the phrase "carrying on trade" was found. But it was the later, not the earlier, phrase which had been adopted in the Act of 1914. One further matter remained. In all the cases referred to the debts which were to be paid or collected had been strictly trade debts. It was maintained that in that

respect they differed from the present case in that the debt claimed by the Crown was in respect of excess profits tax, and that such a debt was not a trade debt but a sum due for taxes, and no more connected with the debtor's business than income tax or any other tax liability. Whatever else might be said about excess profits tax, however, it was imposed on the debtor because he had been trading, and there was no reason for confining trade debts to those incurred in buying or selling. Appeal dismissed.

APPEARANCES: *Caplan* (William Foux & Co.); *Sir Frank Soskice*, K.C. (S.-G.), *Sir Andrew Clark*, K.C., *J. H. Stamp* and *Maurice Berkeley* (Solicitor of Inland Revenue).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

### COURT OF APPEAL

#### **LIMITATION: PREMISES IN EVACUATED AREA**

##### **Bell and Another v. Gosden**

Evershed, M.R., Somervell and Jenkins, L.JJ.

17th January, 1950

Appeal from Eastbourne County Court.

By an agreement dated 13th March, 1939, the defendant leased a house in Sussex for a term of one and three-quarter years at £500 a year, later reduced to £300 a year. On 25th December, 1940, the tenancy determined and on the next day the landlord died. Until 21st July, 1941, the defendant was allowed by the plaintiffs, the landlord's executors, to remain in occupation rent free. On 26th February, 1942, he went out of occupation on the plaintiffs' insistence. By art. 4 (1) of the Defence (Evacuated Areas) Regulations, 1940, "(a) No rent or rates payable in respect of any premises in an evacuation area which are unoccupied at the date when the area is declared an evacuation area or subsequently become unoccupied . . . shall be recoverable during the evacuation period." By s. 3 (1) of the Liabilities (War-Time Adjustment) Act, 1941, application might be made to the court for the adjustment and settlement of the affairs of a person financially embarrassed owing to war circumstances by, among others, any creditor prevented by art. 4 (1) of the regulations of 1940 "from exercising any remedy in respect of a debt . . .," a successful application resulting in a "protection order" whereby the debtor's assets were preserved. In 1945, it was provided by S.R. & O., 1945, No. 1453, that at the end of an evacuation period any debt to which art. 4 (1) of the regulations of 1940 applied should be recoverable only by application under s. 2 of the Liabilities (War-Time Adjustment) Act, 1944. By s. 2 (1) of that Act, which came into force on 26th October, 1944, "any person" owing a debt made irrecoverable by art. 4 (1) of the regulations of 1940 "or the person to whom he is so indebted . . . may apply to the court for the adjustment and settlement of the debt . . ." The evacuation period came to an end on 31st March, 1947. On 4th November, 1948, the landlord's executors instituted proceedings for recovery of the sum accrued due on 29th September, 1940, that was, more than eight years previously. By s. 17 of the Limitation Act, 1939, "No action shall be brought . . . to recover arrears of rent . . . after . . . six years from the date on which the arrears became due." The county court judge gave judgment for the sum claimed, and the defendant now appealed.

EVERSHED, M.R., said that time would not run under s. 17 of the Act of 1939 during the time during which art. 4 (1) of the regulations of 1940 made the debt irrecoverable. The limited remedy made available to the plaintiffs by s. 3 (1) of the Act of 1941—a remedy limited particularly by the fact that the subsection gave the court no power to order actual payment of the debt, and no power even to make a protection order unless the debtor's financial embarrassment were due to war circumstances—did not give the plaintiffs what could

fairly be described as a right to recover the debt which would set time running under the Act of 1939. If the Act of 1944, when it came into force on 26th October, 1944, did give the plaintiffs such a remedy as could be said to set time running again under s. 17 of the Act of 1939, the period of one year and five months from 29th September, 1940, to 26th February, 1942, during which time ran before the regulations of 1940 became operative on the defendant's leaving the premises unoccupied on the latter date, added to the period of four years and nine days from 26th October, 1944, to the date of the proceedings still did not amount to the six years necessary to bar the debt, and the plaintiffs were accordingly entitled to recover. It was therefore unnecessary to decide whether the Act of 1944 did have the effect of setting time running again under the Act of 1939; but, in his opinion, as the remedy given to the plaintiffs by s. 2 of the Act of 1944, and fixed by the order of 1945 as their only remedy for the debt in question, was much more effective for a creditor than his remedies under the Act of 1941, it constituted a right to recover equivalent to a right of action, and was such, therefore, as to cause time to run under s. 17 of the Act of 1939.

SOMERVELL and JENKINS, L.JJ., gave concurring judgments. Appeal dismissed.

APPEARANCES: *Stephen Terrell* (Kenneth Brown, Baker, Baker); *R. G. Dow* (A. J. Wright, for Lawson, Lewis and Bairstow, Eastbourne).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### ESTATE DUTY ON CONTINUING ANNUITY

##### *In re Duke of Norfolk's Will Trusts; Public Trustee v. Inland Revenue Commissioners*

Evershed, M.R., Somervell and Jenkins, L.JJ.

6th March, 1950

Appeal from a decision of Wynn Parry, J. (93 SOL. J. 693).

By the combined effect of the will and the first two codicils of the late Duke of Norfolk, who died in 1917, an annuity of £2,000 was bequeathed to his trustees during the joint lives of the late Viscount Fitzalan and his son, the present viscount, and the survivor, payable to the father during his life and after his death to the son. Viscount Fitzalan died in May, 1947. The summons raised the question whether estate duty was payable under s. 1 of the Finance Act, 1894, on the value of a continuing annuity for the life of the present viscount, as the plaintiff contended, or under s. 2 (1) (b) of the Act on the capital value of so much of the testator's estate as was required to produce an annuity of £2,000, as was contended on behalf of the Commissioners. Wynn Parry, J., who reserved judgment, held that the plaintiff's contention was right and that the case was concluded against the Commissioners by the decision in *In re Cassel* [1927] 2 Ch. 275. The Commissioners appealed and the court, having reserved judgment, dismissed the appeal.

EVERSHED, M.R., said that the Commissioners had taken two distinct points and claimed estate duty either under s. 1 of the Finance Act, 1894, in respect of the share of property producing the annuity, or under s. 2 (1) (b) in respect of the property producing the annuity to the extent by which a benefit accrued or arose by the cesser of the deceased's interest. The second ground only had been considered and rejected by Wynn Parry, J. He held that the simultaneous right to tax under both ss. 1 and 2 of the Act was inconsistent with *Earl Cowley v. Inland Revenue Commissioners* [1899] A.C. 198 and Lord Macnaghten's well-known statement that the two sections were mutually exclusive and applied to different cases. He also held that he was bound by the decision of Russell, J., in *In re Cassel* [1927] 2 Ch. 275. His lordship discussed this case, and criticisms which had been passed on it in two other cases, but thought that it was an authority in principle governing the case of successive interests in a continuing annuity, and, after the decision in *Christie v. Lord Advocate* [1936] A.C. 569, one binding the court. In the case of aliquot shares of general

income, property passed on the cesser of a life interest, but it did not follow that there was a similar passing of corpus in the case of a continuing annuity. The two cases were entirely different. The distinction between an annuity and a life interest in a share of capital might be a fine one, but it rested on the essential characteristics of an annuity. It was said that the existing practice of the Estate Duty Office might work hardly on a second annuitant, if he only survived for a short time, but that was not a matter which concerned the court. The testator could provide for it, and sometimes did so. In his lordship's opinion, the decision of Wynn Parry, J., was correct and the appeal must be dismissed.

SOMERVELL and JENKINS, L.JJ., delivered judgment to the same effect.

APPEARANCES: *Sir Andrew Clark*, K.C., and *J. H. Stamp* (Solicitor of Inland Revenue); *Gerald R. Upjohn*, K.C., and *Hubert Rose* (Nicholl, Manisty, Few & Co.).

[Reported by H. LANGFORD LEWIS, Esq., Barrister-at-Law.]

#### ESTATE AGENTS: COMMISSION

##### *Graham & Scott (Southgate), Ltd. v. Oxlade*

Cohen, Asquith and Singleton, L.JJ.

14th March, 1950

Appeal from Roxburgh, J.

The defendant placed in the hands of the plaintiff estate agents a property which he wished to sell. Commission was expressed to be payable to the agents in the event of their introducing a person or persons willing and able to purchase. They found a person who was able and willing to purchase "subject to contract," but whose offer was made "subject to a surveyor's report." Roxburgh, J., said that the agents had never found a person able and willing to purchase. The authorities made it impossible for him to conclude that an offer "subject to contract" might not be evidence that the person making it was willing to purchase; and he recognised that there was no logical distinction between "subject to contract" and "subject to survey," but he held that the fact that an offer was "subject to survey" precluded the possibility of the maker of the offer being a person willing to purchase before he had expressed his satisfaction with the survey. The agents appealed. (*Cur. adv. vult.*)

COHEN, L.J., reading his judgment, said that in *Giddy and Giddy v. Horsfall* (1947), 63 T.L.R. 160, Lewis, J., had decided that a person might be willing to purchase notwithstanding that his or her offer might have been made subject to contract. It was contended for the defendant that *Giddy and Giddy v. Horsfall*, *supra*, was wrongly decided and that the proper view was that of Roxburgh, J., namely, that, under a contract to pay commission to an agent who introduced a person able and willing to purchase a property, the agent could never recover unless he could prove that the person so introduced made an offer, or was willing to make an offer, which by acceptance could be turned into a firm contract. *Giddy and Giddy v. Horsfall*, *supra*, was not binding on that court and he (the Lord Justice) was unable to agree with it. In reaching his conclusion he was not saying that the introduction into the preliminary arrangements of the expression "subject to contract" would necessarily in all cases prevent the agents from establishing that the person introduced was willing to purchase: it clearly would not be fatal to the agent's claim if it were introduced by the vendor in accepting an unqualified offer; but, if it were introduced by the prospective purchaser, the normal inference would be that he did so with a view to reserving to himself a *locus penitentiae*—conduct which seemed inconsistent with the view that he was a willing purchaser. The agent might prove that a person whom he had introduced was willing to purchase the property by showing that that person had made an unqualified offer, or expressed an unqualified intention to make an offer, notwithstanding that such an offer, until accepted, could be withdrawn. On the other hand, if the evidence showed that the offer was qualified by a condition

inserted to prevent the other party from turning the offer into a contract by acceptance, he (the Lord Justice) thought it impossible to say that the agent had discharged the burden which rested on him of proving that the person whom he had introduced was willing to purchase the property. Here the proposed purchaser was anxious to purchase, but she never made an unqualified offer. Her anxiety was at all material times qualified by the stipulation, introduced by her, "subject to satisfactory survey." Such an offer meant that she had constituted herself the arbitrator whether the survey was satisfactory or not; and the vendor could not, by accepting her offer, constitute a binding contract. Roxburgh, J., was accordingly right in his conclusion that the agents had not established that the proposed purchaser was a "person willing and able to purchase the property," and the appeal would be dismissed.

ASQUITH, L.J., agreed.

SINGLETON, L.J., gave judgment agreeing. Appeal dismissed.

APPEARANCES: *Stanley Rees (William White & Co.); N. McKinnon (Craig, Hicks & Co.).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### ESTATE AGENT: COMMISSION

##### McCallum v. Hicks

Bucknill and Denning, L.J.J., and Hodson, J.  
20th March, 1950.

Appeal from Exeter County Court.

The defendant, a boiler cleaner, wished to sell his house in order to buy another which he had in mind. He accordingly instructed estate agents in the neighbourhood in the matter, including the plaintiff, in the following manner: he visited the plaintiff's office, where he saw only the clerk whom he told that he had come to see the plaintiff to "see if he can find someone to buy my house." There was no mention of commission and nothing in writing passed between the plaintiff and the defendant. The plaintiff found a purchaser at the defendant's price. While that purchaser was trying to raise a mortgage in order to finance the purchase she entered into a provisional agreement, subject to formal contract, with the defendant, after having paid £5 as a deposit. Three days later the defendant sold the house to another purchaser who had the full price immediately available in cash, and duly paid commission to the estate agent who had introduced that purchaser. The plaintiff claimed commission from the defendant on the ground that he had found a purchaser ready, willing and able to buy the defendant's house. The county court judge gave judgment for the plaintiff, interpreting the oral instructions to the plaintiff to find "someone to buy" as meaning someone ready, willing and able to buy, which, he found, the plaintiff had done. The defendant appealed.

BUCKNILL, L.J., said that the implied agreement by the defendant to pay commission was, on the proper interpretation of the words used, an agreement to pay it if the plaintiff found a purchaser and not merely a person able, willing and ready to purchase. The result of the county court judge's decision, if it were correct, would be unreasonable; first, the defendant might have been liable to pay commission to any number of agents each of whom had produced a person able, willing and ready to buy; secondly, a vendor in humble circumstances would naturally expect to pay commission out of the purchase price when received. The appeal should be allowed.

DENNING, L.J., agreeing, said that when an ordinary house owner asked an estate agent to "find a purchaser," it meant that the agent was to find a person who would actually complete the purchase of the house, it being understood that the agent's commission was to be paid out of the purchase price. If the sale were not completed, the agent would get no commission unless he had procured an actual binding and

enforceable contract of purchase. An agent was not entitled to commission short of the making of such a contract merely because he induced the house owner to sign a document making him liable to pay commission if the agent introduced a "person able, ready and willing to purchase." A person might not properly be said to be "willing" to purchase so as to entitle the agent to commission unless he were irrevocably willing, in proof of which he had entered into a binding contract to purchase.

HODSON, J., gave a concurring judgment. Appeal allowed.

APPEARANCES: *E. Dennis Smith (Church, Adams, Tatham and Co., for Lee-Barber, Goodrick & Co., Torquay); Herrick Collins (Baileys, Shaw & Gillett, for Tozers, Newton Abbot).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### KING'S BENCH DIVISION

##### ESTATE AGENT: COMMISSION

##### Bavin v. Bunney

Devlin, J. 21st March, 1950

Action.

The defendant, who carried on the business of a restaurant proprietor, on 4th May, 1948, instructed the plaintiff, an estate agent, to sell the business and her lease of the premises at which she conducted it for £4,250. She signed a form of authority addressed to him which stated that commission on the scale authorised by the Auctioneers' and Estate Agents' Institute would be payable by her if the property were let or sold through his introduction. On 18th May, the agent informed a prospective purchaser of the business and on the next day took him to the restaurant and introduced him to the defendant. The purchaser then returned with the agent to his office, decided to buy the business and lease, and went to fetch his cheque book with a view to paying the deposit. The agent immediately informed the defendant by telephone of that fact, and later that day duly received a cheque for £425 as a deposit. The defendant had meanwhile met another prospective purchaser willing to pay £4,400 for the business, and she eventually sold it to him. The plaintiff agent claimed £210 10s. commission. (*Cur. adv. vult.*)

DEVLIN, J., in a written judgment, said that the plaintiff had clearly introduced the prospective purchaser, but the question was whether the property was "sold" to him. In order to recover the commission claimed the plaintiff must prove that there was a contract binding on the purchaser to purchase the property—one which the defendant could have enforced. It was not enough that the prospective purchaser was ready and willing and able to complete the purchase; there must be a legal contract binding him to do so. There was no such contract here; part of the property for sale consisted of an interest in land, namely, a lease of the premises; and there was no agreement in writing signed by the purchaser or his agent; nor was there any memorandum or note in writing sufficient to satisfy s. 40 of the Law of Property Act, 1925. Accordingly the property was not sold, and the plaintiff's claim failed. Judgment for the defendant.

APPEARANCES: *Lerron (John Jenkins & Son); Douglas Lowe (W. J. Stoffel).*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### PROBATE, DIVORCE AND ADMIRALTY DIVISION

##### DESERTION: RESPONDENT IN MENTAL HOSPITAL

##### More v. More

Pilcher, J. 8th February, 1950

Petition for divorce.

The parties were married in 1938. Some months later the husband developed a mental illness as a result of which he twice assaulted his wife. He entered a mental hospital

as a voluntary patient, signing a consent to that course. The wife visited him regularly during the next five years, but ceased to do so after 1943 because of his indifference towards her or to her suggestions that he should take advantage of arrangements which she had made and leave the hospital. On 31st March, 1949, she filed this petition alleging desertion during the three years immediately preceding. The Official Solicitor pleaded on behalf of the husband that he was incapable of forming any *animus deserendi* or *revertendi*. A doctor examined the husband in February, 1949, and stated in an affidavit that the husband was quite aware that he could have his discharge if he wanted it; that his intellectual capacity was such that he knew that he had a wife and that it was a man's duty to live with his wife; that he was staying in the hospital of his own accord, though capable of making a contrary decision, and that he was quite content to stay where he was and had no desire to leave in order to go to his wife or anywhere else. The evidence was that his condition had considerably deteriorated by the end of 1949.

PILCHER, J., said that he was satisfied that during the relevant period the wife would have been prepared to take her husband back notwithstanding her earlier consideration of a possible petition for divorce on the ground of insanity. But he must also be satisfied that the husband knew what he was doing and that his duty as an ordinary man was to live with his wife, and that he was aware that he was not doing so. He must also have been aware that he could leave the hospital if he wished to. Although, from further medical evidence, he was satisfied that the husband would not have been capable of having the necessary *animus deserendi* and *revertendi* late in 1949, he had no doubt that the husband was aware of the position up to and after the date on which the petition was filed. He, therefore, had had the necessary deserting mind, and there would be a decree.

Decree *nisi*.

APPEARANCES: William Latey (Herbert Oppenheimer, Nathan & Vandyk); Stuart Horner (Official Solicitor).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### LEGITIMACY: EVIDENCE OF DEATH

##### MacDarmaid v. Attorney-General

Hodson, J. 10th February, 1950

Legitimacy petition.

The petitioner was born on 14th March, 1894. Her parents married in 1925. Her father had been previously married. His first wife was last seen at a roller-skating rink in good health and aged some twenty-seven years in 1891. The petitioner's right to a declaration under s. 1 (1) of the Legitimacy Act, 1926, was subject to s. 1 (2), whereby nothing in the Act "shall operate to legitimate a person whose father or mother was married to a third person when the illegitimate child was born." (*Cur. adv. vult.*)

HODSON, J., said that it was argued for the petitioner that no onus was cast on her by s. 1 (2) of the Act of 1926 to prove that her father's first wife was dead, and that as the matter was left in doubt by the evidence she was accordingly entitled to succeed. For the Attorney-General it was argued that subs. (1) did not come into operation in the case of a person whose father was married before the date of her birth unless there was evidence on which, despite the marriage, a declaration of legitimacy could be made. It was contended that the onus was therefore on the petitioner to prove that the death of the first wife occurred on or before 14th March, 1894, or to prove circumstances or facts which the court should accept as *prima facie* evidence that that death occurred. In his (his lordship's) opinion, the proposition contended for by the Attorney-General was correct; once the fact of the previous marriage was proved, the petitioner must at least prove facts from which the cessation of the first marriage could properly be inferred before she could succeed.

His lordship referred to *Doed. Knight v. Nepean* (1833), 5 B. & Ad. 86; *R. v. Harborne Inhabitants* (1835), 2 A. & E. 540, at p. 544; *R. v. Twyning Inhabitants* (1819), 2 B. & Ald. 388; and *In re Phené's Trusts* (1870), L.R. 5 Ch. 139, at p. 150, and said that applying the law as laid down in those decisions to the facts of the present case, without reliance on any presumption, he found that, as the first wife had been seen alive in about 1891 at the age of twenty-seven, nothing abnormal about her health or circumstances being observed, save that she was said to have aged somewhat, the proper inference to draw on the probabilities of the case was that she was still alive in 1894 when the petitioner was born. Therefore, the petition failed. Petition dismissed.

APPEARANCES: Turner, K.C., and Ifor Lloyd (Evill and Coleman); Stockdale (Treasury Solicitor).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### COURT OF CRIMINAL APPEAL

##### SUSPECTED PERSON: PREVIOUS CONVICTIONS

###### R. v. Clarke

Humphreys, Hilbery and Sellers, JJ.  
13th February, 1950

Appeal from conviction.

The appellant was convicted at Middlesex Quarter Sessions of being in possession of an imitation firearm, contrary to s. 23 (2) of the Firearms Act, 1937. During a night in November, 1949, two police officers observed him for some twenty minutes in various streets in circumstances which satisfied the jury that he was loitering with intent to commit a felony. They arrested him and found an imitation firearm on him. In order to establish that he was a "suspected person" for the purposes of s. 23 (2) of the Act of 1937 read with Sched. III to the Act, s. 4 of the Vagrancy Act, 1824, s. 15 of the Prevention of Crimes Act, 1871, and s. 7 of the Penal Servitude Act, 1891, it was proposed to prove against him two previous convictions for larceny and shopbreaking, of which at the time of his arrest the two police officers were unaware. The case went to the jury solely on the footing that the appellant was a "suspected person" because of his previous convictions. He now contended that he could not be described as a "suspected person" since the police who gave evidence of his loitering were unaware of his previous convictions at the time of his arrest. (*Cur. adv. vult.*)

HUMPHREYS, J., delivering the judgment of the court, said that the words "suspected person" in s. 4 of the Act of 1824 had been discussed in many cases. None had apparently raised this particular point, but it was the opinion of the court that there was nothing in the Act or in any of the authorities cited to suggest that the previous convictions must be known to the arresting officers in order to prove that as the result of those convictions the person convicted became a "suspected person." Any such decision would tend to make the provisions of s. 4 useless, since a thief might change his venue and the places where he chose to loiter with sufficient frequency to make it unlikely that the local police officers would recognise him. *Ledwith v. Roberts* [1937] 1 K.B. 232; 80 SOL. J. 912, and *R. v. Fairbairn* [1949] 2 K.B. 690; 93 SOL. J. 564, supported that view. Appeal dismissed.

APPEARANCES: Havers, K.C., and R. M. D. Havers (Registrar, C.C.A.); J. M. G. Griffith-Jones (Solicitor, Metropolitan Police).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

#### CORRECTION

In our report of *Goldberg v. Edwards*, ante, p. 128, the appearances should read: "Pascoe Hayward, K.C., and G. Maddocks (J. D. Langton & Passmore, for Wise & Wise, Manchester); Ingress Bell (Sale, Lingards & Co., Manchester)."

## SURVEY OF THE WEEK

### HOUSE OF LORDS

#### A. PROGRESS OF BILLS

##### Read First Time :—

<b>Maintenance Orders Bill [H.L.]</b>	[21st March.
To enable certain maintenance orders to be made and enforced throughout the United Kingdom.	
<b>Medical Bill [H.L.]</b>	[22nd March.
To amend the Medical Acts and for purposes connected therewith.	
<b>Runcorn-Widnes Bridge Bill [H.L.]</b>	[22nd March.

##### Read Second Time :—

<b>Bath Extension Bill [H.L.]</b>	[21st March.
<b>Carlisle Extension Bill [H.L.]</b>	[21st March.
<b>Doncaster Corporation Bill [H.L.]</b>	[16th March.
<b>Faculty of Homoeopathy Bill [H.L.]</b>	[21st March.
<b>German Potash Syndicate Loan Bill [H.L.]</b>	[21st March.
<b>Gun Barrel Proof Bill [H.L.]</b>	[22nd March.
<b>London County Council (Woolwich Subsidences) Bill [H.L.]</b>	[16th March.
<b>Midwives (Amendment) Bill [H.L.]</b>	[21st March.
<b>Prescelly Water Bill [H.L.]</b>	[16th March.
<b>Saint John's Chapel Beverley Bill [H.L.]</b>	[22nd March.
<b>Surbiton Corporation Bill [H.L.]</b>	[16th March.
<b>Tees Conservancy Bill [H.L.]</b>	[22nd March.
<b>Wakefield Extension Bill [H.L.]</b>	[22nd March.
<b>Wear Navigation and Sunderland Dock Bill [H.L.]</b>	[21st March.

##### In Committee :—

<b>Solicitors Bill [H.L.]</b>	[21st March.
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#### B. DEBATES

LORD LLEWELLIN rose to call attention to the manner in which the provisions of the **Town and Country Planning Act, 1947**, were working out in practice and to ask the Government what conclusions they had reached in regard either to the necessity for an amending Act or to an improvement in the administration of the present Act. Lord Llewellyn first sought assurances on two points. The first was : that where the rental paid by one lessee was the same as that paid by another, the development charge paid by either of them would be the same for development of the same premises. He could not see why a man should pay a bigger development charge because his credit was thought to be better than that of other persons, or because perhaps he happened to have more means. The second matter was that the Central Land Board was charging people for the extra 10 per cent. free tolerance which they obtained with the main permission, even though they were not intending to use that 10 per cent. and did not then seek permission so to do. He would like this point clarified.

Lord Llewellyn said we had set up a kind of robot in the Central Land Board. One of the most effective ways of keeping a check on a department was for the Minister himself to examine one or two cases occasionally. At present the Minister could not interfere in any particular case. He wanted the Minister to be able to give the Board directions, even on individual cases. Furthermore, there ought to be a tribunal before which people could go and argue about development charges. This huge monopoly must be brought under direct Ministerial control, and so under Parliamentary control. There must be less rigidity and more common sense in the administration, and matters would never be satisfactory until there was an impartial tribunal to which a man could appeal if he felt aggrieved. The development charge on buildings should be dropped, and a charge should be made only in case of development of undeveloped land.

LORD MACDONALD said cases discussed on the last occasion [see 93 SOL. J. 744, 757] were of two sorts. The first type dealt with "haggling." He thought it fair to say that haggling, as indicated in many of the cases raised, amounted to nothing more than the disclosure by the applicant of further facts relating to the case which affected value but which were not disclosed by the applicant to the valuer on the first application. Very often each step in the negotiations brought further information and consequently each step might bring a variation in the figures which were suggested by each side. With regard to the 10 per cent. tolerance, the case mentioned in the last debate and relied on by Lord Llewellyn could not be traced by the Central Land Board. It was definitely not the Board's practice to do as

Lord Llewellyn suggested was being done. LORD LLEWELLIN apologised if he was wrong—he had been advised that people were being charged the extra 10 per cent. LORD MACDONALD then dealt with the nineteen specific cases mentioned in the last debate on this subject, saying that there was an answer to every case so far as the facts were available.

Coming to the question of delay, he was himself unable in some cases to understand the terrible delay. Inquiries would be made in individual cases and an attempt would be made to speed up the local authority machinery and to see that appeals were dealt with more speedily.

THE ARCHBISHOP OF YORK said he was a wholehearted supporter of the Act. He was glad it was passed, but was troubled by the undoubted unpopularity which had been created by its administration. LORD HADEN-GUEST hoped there would be no going back from the 100 per cent. development charge. It was time we took the value which the community created by its work and life and used it for the good of the community. LORD GAGE said the regulations governing the Central Land Board were almost unintelligible and from reading them it was impossible to discover in any matter of detail what the policy of the Government really was. It was urgently necessary that they should be re-drafted in a much clearer and fuller form. LORD CHORLEY said there were clearly a number of weaknesses in the Act which would sooner or later have to be remedied by legislation.

Replying to the debate the LORD CHANCELLOR said people came to their lordships with their cases, and noble lords gave these facts to the House. They had heard only one side of the case and were not to be blamed if the facts turned out otherwise. Answering a query put by LORD MESTON, LORD JOWITT said that the value of land for estate duty was existing user rate, unless it was dead ripe land, in which case it took the rate appropriate to the land. If development charge could be reduced from 100 per cent. to 80 per cent. by regulation, then the matter would go before the Minister. A right of appeal, he thought, would tend to make the whole scheme more rather than less rigid. There would have to be an exact code and no haggling. He could not accept a suggestion that interim payments should be made from the £300 million. Until the claims had been valued obviously they could not begin to divide up the fund.

LORD LLEWELLIN, winding up, thanked the Lord Chancellor and Lord Macdonald for their assurances. He still felt that some outside body would be better for investigating the working of the Act, and could not agree that an appeal tribunal would have any more difficult task than that which had to deal with rating appeals. The motion was withdrawn. [22nd March.

### HOUSE OF COMMONS

#### A. PROGRESS OF BILLS

##### Read First Time :—

<b>Distribution of Industry Bill [H.C.]</b>	[22nd March.
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To make further provision for the acquisition of land, creation of easements and carrying out of work in development areas; to authorise the Board of Trade to make grants in exceptional cases in connection with the establishment in, or transfer to, development areas of industrial undertakings, and to make grants or loans to housing associations for the provision of dwellings in development areas; and to extend s. 5 of the Employment and Training Act, 1948, in relation to persons transferred for employment in industrial undertakings established in, or transferred to, development areas.

##### Read Second Time :—

<b>Iford Corporation (Drainage) Bill [H.C.]</b>	[22nd March.
<b>Port of London Bill [H.C.]</b>	[22nd March.
<b>Post Office and Telegraph (Money) Bill [H.C.]</b>	[24th March.

##### In Committee :—

<b>Diplomatic Privileges (Extension) Bill [H.C.]</b>	[24th March.
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#### B. QUESTIONS

THE ATTORNEY-GENERAL said that the recommendations of the Porter Committee on the law of libel, to which it had not been possible to give effect by rules of court, were under consideration, but he was unable to say when it would be possible to introduce legislation to deal with this very complex subject. [20th March.

In reply to Lieut.-Colonel LIPTON, the PRIME MINISTER stated that he was not prepared at the present time to set up a Royal Commission to investigate and report on the marriage laws.

[20th March.

Mr. HAROLD WILSON said that he could not see any way at present to authorise a general payment of claims under Pt. II of the War Damage Act, 1943 (Business Claims). Advance payments were being made where the Board of Trade were satisfied that the replacement or repair of the goods was expedient in the public interest or that payment was necessary to avoid undue hardship. Payments amounting to £43,250,000 had already been made on these grounds.

[21st March.

Sir WAVELL WAKEFIELD asked the Minister of Health what steps he proposed to take to have it defined more clearly what was a "fair" rent for the guidance of rent tribunals and of the law courts; and when he proposed to widen the appeal allowed to a divisional court against rent tribunal decisions from the one issue of jurisdiction to all issues. Was he aware that the Lord Chief Justice had stated that it was most unsatisfactory that there was no proper definition of a fair rent and had also commented on the narrowness of the right of appeal? In reply Mr. BEVAN said he did not propose to introduce the legislation which would be needed. He had not seen the statement alleged to have been made by the Lord Chief Justice. These matters had been very fully discussed by the House when the Bill was before it and he would acquaint the Lord Chief Justice with these facts.

[23rd March.

Mr. SPEARMAN asked if the Minister of Health would enable local authorities to purchase property at current market value, as under the present regulations they were unable to obtain the necessary premises. Mr. BEVAN said that the basis of compensation was laid down in the Town and Country Planning Act, 1947, and it was essential that local authorities should not pay more than the basis allowed as otherwise the purpose of that Act might be defeated.

[23rd March.

Mr. BEVAN stated that no information or guidance had been communicated to English rent tribunals for the purposes of the Landlord and Tenant (Rent Control) Act, 1949, in regard to the principles to be followed in assessing a reasonable rent.

[23rd March.

#### TOWN AND COUNTRY PLANNING

Mr. BOOTHBY asked the Minister of Town and Country Planning whether he was aware that the development sections of the Town and Country Planning Act, 1947, had, in practice, hampered and delayed the development and expansion of housing and whether he would introduce amending legislation to overcome the difficulty. The PARLIAMENTARY SECRETARY (Mr. LINDGREN) said he would examine any evidence available on this point, but there was no prospect of amending legislation during the present session.

[21st March.

In reply to Mr. NABARRO, Mr. LINDGREN said he would be glad to have particulars of any inconsistencies in methods employed in various parts of the United Kingdom by district valuers of the Inland Revenue, when computing development charges payable under the 1947 Act upon extensions to industrial premises. He was aware that, in the event of any difference of professional opinion as between the district valuer of the Inland Revenue and the adviser to the industry seeking expansion, there was no court of appeal or arbitration to which such a difference could be referred. The Government were looking into the operation of the Act to see how, by administration, the procedure could be speeded up and simplified, but a court of appeal would require legislation and he could make no promise about that.

[21st March.

Mr. LINDGREN declined to introduce legislation to amend the 1947 Act so as to abolish the development charge on new houses built for owner-occupation in rural areas.

[21st March.

Replying to Mr. DOUGLAS MARSHALL, Mr. LINDGREN said the Minister of Town and Country Planning had no reason to think that any further extension of the time-limit for submitting claims for loss of development value was called for. The Minister would look into cases of servicemen who had been abroad, but he was assured that commanding officers of overseas units took particular care to see that the matter was called to the attention of serving members of the forces.

[21st March.

#### STATUTORY INSTRUMENTS

- Aerated Waters** Wages Council (Scotland) Wages Regulation Order, 1950. (S.I. 1950 No. 360.)
- Alkali, &c., Works** Order, 1950. (S.I. 1950 No. 364.)
- Central Land Board** (Register of Dealings in Land) Regulations, 1950. (S.I. 1950 No. 355.) See *ante*, p. 183.
- Citrus Fruit** (Amendment and Revocation) Order, 1950. (S.I. 1950 No. 379.)
- Coal Industry** Nationalisation (Superannuation) Regulations, 1950. (S.I. 1950 No. 376.)
- Coal Mines** (Certificates of Competency) (Copies) Order, 1950. (S.I. 1950 No. 368.)
- Coal Mines** (Certificates of Competency) (Fees) Order, 1950. (S.I. 1950 No. 369.)
- Commonwealth Telegraphs** (Pension Rights of Cable and Wireless, Ltd., Staff) Regulations, 1950. (S.I. 1950 No. 356.)
- Cotton Waste Prices** (Revocation) Order, 1950. (S.I. 1950 No. 373.)
- Dangerous Drugs** Regulations, 1950. (S.I. 1950 No. 380.)
- Electricity** (Pension) (Amendment) Regulations, 1950. (S.I. 1950 No. 359.)
- Hill Sheep** Subsidy Payment (Scotland) Order, 1950. (S.I. 1950 No. 385.)
- House of Commons** (Redistribution of Seats) Act, 1949 (Date of Commencement) Order, 1950. (S.I. 1950 No. 371.)
- Household Textiles** (Marking and Manufacturers' Prices) (Amendment) Order, 1950. (S.I. 1950 No. 299.)
- Housing Acts, 1936-1949** (Form of Orders and Notices) (Amendment) Regulations, 1950. (S.I. 1950 No. 363.)
- The purpose of these regulations is to delete all reference to "the working classes" in the forms of orders and notices contained in the schedule to the Housing Act (Forms of Orders and Notices) Regulations, 1937-39.
- Import Duties** (Drawback) (No. 2) Order, 1950. (S.I. 1950 No. 345.)
- Molasses** (Revocation) Order, 1950. (S.I. 1950 No. 352.)
- Nant-Oer** Trunk Road Order, 1950. (S.I. 1950 No. 387.)
- National Health Service** (Designation of Teaching Hospitals —University College Hospital and the Eastman Dental Hospital) Order, 1950. (S.I. 1950 No. 353.)
- National Health Service** (Welsh Joint Pricing Committee) (Amendment) Order, 1950. (S.I. 1950 No. 354.)
- Neath-Abergavenny** Trunk Road (Clydach and Other Diversions) Order, 1950. (S.I. 1950 No. 388.)
- Plywood Prices** (Amendment) Order, 1950. (S.I. 1950 No. 340.)
- Sewing Cottons** and Threads (Maximum Prices) Order, 1950. (S.I. 1950 No. 382.)
- Shredded Suet** (Revocation) Order, 1950. (S.I. 1950 No. 362.)
- Stopping up of Highways** (Kent) (No. 1) Order, 1950. (S.I. 1950 No. 390.)
- Stopping up of Highways** (Warwickshire) (No. 1) Order, 1950. (S.I. 1950 No. 365.)
- Superannuation** (Joint Colonial and Civil Service) Rules, 1950. (S.I. 1950 No. 378.)
- Taunton - Barnstaple - Bude - Fraddon** Trunk Road (Brook Street and Fore Street, Bampton) Order, 1950. (S.I. 1950 No. 375.)
- Temporary Workers in Agriculture** (Minimum Wages) (Scotland) Order, 1950. (S.I. 1950 No. 351.)
- Utility Apparel** (Men's and Boys' Shirts, Underwear and Nightwear) (Manufacture and Supply) (Amendment) Order, 1950. (S.I. 1950 No. 374.)
- Utility Cloth** and Utility Household Textiles (Maximum Prices) (Amendment No. 7) Order, 1950. (S.I. 1950 No. 298.)
- Utility Woven Cloth** (Cotton, Rayon and Linen) Order, 1950. (S.I. 1950 No. 304.)
- Wages Regulation** (Industrial and Staff Canteen Undertakings) (Amendment) Order, 1950. (S.I. 1950 No. 377.)
- Wild Birds** Protection (County of Orkney) Order, 1950. (S.I. 1950 No. 367.)
- Ysbytty Farm** Trunk Road Order, 1950. (S.I. 1950 No. 389.)

#### PARLIAMENTARY PUBLICATIONS

**Maintenance Orders Bill** (House of Lords Bills, Session 1950, No. 6.)

The purpose of this Bill is (1) to extend the jurisdiction of the English, Scottish and Northern Ireland courts of summary jurisdiction in the making of maintenance orders, and (2) to provide for the registration and reciprocal enforcement of maintenance orders in all parts of the United Kingdom.

## NOTES AND NEWS

### Honours and Appointments

On the retirement of Judge Scobell Armstrong from the County Court Bench, the Lord Chancellor has decided to appoint Mr. JAMES MACMILLAN to be a Judge of County Courts, and has made the following arrangements to take effect on 7th April, 1950: Judge RAWLINS to be Judge of Circuit 59 (Cornwall); Judge MACMILLAN to be one of the Judges of Circuit 37 (West London, etc.) and additional Judge at the Bow and Marylebone County Courts.

The King has approved the Home Secretary's recommendation that Mr. HUMFREY HENRY EDMUNDS be appointed Recorder of Bath in succession to Mr. Edward Anthony Hawke, who has been appointed Chairman of London Sessions.

The Attorney-General has made the following appointments: Mr. E. B. STAMP, conveyancing counsel to the Ministry of Agriculture and Fisheries and the Commissioners of Crown Lands, and to the Forestry Commissioners, in succession to Mr. W. R. Waite; Mr. J. H. BUZZARD, junior counsel for the Crown in appeals from the Metropolitan Magistrates to London Sessions and in emergency cases for the Director of Public Prosecutions in the Court of Criminal Appeal, in succession to Mr. Maxwell Turner; Mr. E. I. GOULDING, conveyancing counsel to the Treasury and the War Office, in succession to Mr. Wilfred Gutch; Mr. E. J. P. CUSSEN, prosecuting counsel to the Crown at North London Sessions, in succession to Mr. Mervyn Griffith-Jones.

Mr. P. E. G. SMITH, assistant deputy coroner for West Somerset, has been appointed coroner in succession to the late Col. G. P. Clarke.

Alderman H. KEEBLE HAWSON, solicitor, of Sheffield, has accepted an invitation to be the next Lord Mayor of Sheffield.

The following appointments are announced in the Colonial Legal Service: Mr. J. E. D. CARBERRY, Puisne Judge, Jamaica, to be Senior Puisne Judge of the Supreme Court of Judicature, Jamaica; Mr. J. A. O'LOUGHLIN, Assistant Lands Officer, Tanganyika, to be Lands Officer, Kenya; Mr. C. H. WHITTON, Senior Federal Counsel, Federation of Malaya, to be Registrar of Supreme Court, Federation of Malaya; and Mr. T. N. N. BRUSHFIELD to be Assistant Registrar of Titles and Conveyancer, Uganda.

### Personal Notes

Mr. P. A. P. Gay, solicitor, of Romford, was married to Miss Jean Marie Beckett, of Wanstead, on 11th March.

Mr. D. L. Sandelson, solicitor, of Stratford Place, London, W.1, was married to Miss Felicity Lister, of Manchester, on 20th March.

Plymouth solicitors bade farewell to His Honour Judge Scobell Armstrong when he took his seat as county court judge for the last time on 23rd March. In the presence of over thirty solicitors, including the deputy Town Clerk, Mr. Ernest Vosper, Mr. T. R. McCready, president of the Plymouth Incorporated Law Society, paid tribute on behalf of the profession to His Honour for his work during his ten years of office. After lunch, His Honour was presented with a self-winding gold wristlet watch by Mr. John Woolland, senior advocate. Mr. Woolland said that thirty-four legal firms had contributed, and emphasised that it was not a presentation to him as His Honour the Judge from the Law Society, but the spontaneous and eager gift of a number of personal friends in the profession to whom he had endeared himself.

### Miscellaneous

#### THE SOLICITORS ACTS, 1932 TO 1941

On the 15th day of March, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that there be imposed upon JOHN CECIL PETERS, of No. 4 New Street, York, in the County of York, a penalty of £50, to be forfeit to His Majesty, and that he do pay to the complainant his costs of and incidental to the application and inquiry.

On the 15th day of March, 1950, an order was made by the Disciplinary Committee constituted under the Solicitors Acts, 1932 to 1941, that EDWIN HARDING BOYCE, of No. 11 Lime Road, Accrington, in the County of Lancaster, and No. 120 Saltergate, Chesterfield, in the County of Derby, be suspended from practice as a solicitor for a period of six months from the 15th day of March, 1950, and that he do pay to the applicant his costs of and incidental to the application and inquiry.

### GENERAL COUNCIL OF THE BAR

The Annual General Meeting of the Bar will be held in the New Hall, Lincoln's Inn, on Monday, 17th April, 1950, at 3 o'clock. The Attorney-General will preside.

### PATENTS ACT, 1949

I, WILLIAM ALLEN VISCOUNT JOWITT, Lord High Chancellor of Great Britain, by virtue of Section 84 (1) of the Patents Act, 1949, and all other powers enabling me in this behalf, do hereby select and appoint the Honourable Mr. Justice Lloyd-Jacob to be the Judge of the High Court to deal with any petition under Section 23 or Section 24 of the Act and any reference or application to the Court under the Act.

Dated this 23rd day of March, 1950.

JOWITT, C.

### REGISTERED DESIGNS ACT, 1949

I, WILLIAM ALLEN VISCOUNT JOWITT, Lord High Chancellor of Great Britain, by virtue of Section 27 of the Registered Designs Act, 1949, and all other powers enabling me in this behalf, do hereby select and appoint the Honourable Mr. Justice Lloyd-Jacob to be the Judge of the High Court to deal with any reference or application to the Court under the Act.

Dated this 23rd day of March, 1950.

JOWITT, C.

### COMPULSORY REDEMPTION OF LAND TAX

The provisions of the Finance Act, 1949, on the compulsory redemption of land tax come into operation on 1st April. As from that date the land tax on any property must be redeemed when it first changes hands (e.g., on sale or death or on the grant of a lease for twenty-one years or more). Copies of an explanatory pamphlet can be obtained from the Land Tax Redemption Office, 18-19 Monck Street, Horseferry Road, London, S.W.1, or from local collectors of taxes.

## SOCIETIES

A meeting of the Home Counties Branch of the LOCAL GOVERNMENT LEGAL SOCIETY was held on Friday, 17th March, 1950, at The Law Society, 60, Carey Street, W.C.2. The Chairman (Mr. H. B. Sales, Deputy Town Clerk of Guildford) presided over a good attendance, and welcomed a number of new members. A number of legal and professional matters were discussed, and at the conclusion of the meeting tea was provided. All solicitors engaged in full-time employment with a local authority or development corporation are eligible to join the Society, and articulated clerks in similar employment are eligible for associate membership. The Hon. Secretary of the Home Counties Branch is Mr. R. H. Morton, Assistant Solicitor, West Ham Town Hall, Stratford, E.15. Branch meetings are normally held bi-monthly on Fridays at 2.30 p.m.

At the meeting of the UNITED LAW SOCIETY held in the Gray's Inn Common Room at 7.15 p.m. on Monday, 27th March, 1950, the motion for debate was "That government by party is opposed to the interests of this nation." It was proposed by Mr. J. R. Bracewell on the grounds that party government does not accord with the opinions of a large section of the community and the party political machine prevents a member of Parliament from voting according to his conscience. Mr. H. J. Maddocks opposed the motion, pointing out to the house the chaos which would result from failure to maintain the party system of government. Other speakers were A. Garfitt, A. J. Pratt, Mrs. J. R. Bracewell, C. H. Winnett, S. E. Redfern, O. T. Hill, D. N. Keating, T. P. Burton, Miss J. M. K. Simmons, A. G. Vincent, D. G. Rawlins, M. J. H. Beazley and R. M. Costain. The motion was lost by sixteen votes to seven.

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